

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, INC.
Petitioner

v.

UNILOC LUXEMBOURG, S.A.¹
Patent Owner

IPR2017-00199
PATENT 7,092,671

**PATENT OWNER RESPONSE TO
PETITIONER'S MOTION TO SEAL**

¹The owner of this patent is Uniloc 2017 LLC.

Petitioner's November 16, 2018 motion to seal (Paper 16), seeking to seal the entirety of Exhibit 2005 and the unredacted Patent Owner Response, should be denied because Petitioner does not show good cause for sealing the entirety of Exhibit 2005, does not show good cause for sealing the redacted portions of the Patent Owner Response, and has waived the alleged confidentiality of the information it seeks to seal.

There is a "strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public . . ." *See Garmin Int'l, Inc. et al. Petitioner*, IPR2012-00001 (JL), 2013 WL 8149381, at *1 (Apr. 5, 2013). The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54. The moving party has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). It must demonstrate to the Board "why the information sought to be sealed constitutes confidential information." *Garmin Int'l, Inc.*, IPR2012-00001 (JL), 2013 WL 8149381, at *2 (emphasis added).

1. Petitioner does not show good cause to seal the entirety of Exhibit 2005.

Petitioner's motion should be denied because Petitioner does not allege, much less show, that the entirety of Exhibit 2005 is confidential. The Practice Guide encourages parties to redact sensitive information rather than seeking to seal entire documents. *See Office Patent Trial Practice Guide*, 77 Fed. Reg. 48, 761 (Aug. 14, 2012) ("The rule encourages parties to redact sensitive information, where possible, rather than seeking to seal entire documents."). Consistent with this policy, the

Board recently denied a motion to seal filed by the same Petitioner in another IPR where (as here) Petitioner sought to seal entire exhibits even though it did not “assert that any exhibit contained only confidential information.” *See Unified Patents, Inc. v. Uniloc Luxembourg, S.A.*, IPR2017-02148, Paper 34 (PTAB Sept. 7, 2018) (requiring Petitioner to refile and either demonstrate why the entire contents of the exhibits were confidential or submit redacted versions and show good cause why the redactions were confidential).

Here, Petitioner claims that “Unified Membership Agreements and Subscription Forms” contain only confidential information (a dubious claim²) but does not allege, much less show, that the other documents included in Exhibit 2005 contain only confidential information.

Petitioner’s argument concerning the alleged confidentiality of its information focuses almost exclusively on Petitioner’s desire to maintain the confidentiality of the identity of its members. The identity of Petitioner’s members is highly relevant to the RPI analysis. Further, in IPR2017-2148, Paper 34, the Board already pointed to the identity of a Unified Patent Member – Square Enix – as a specific example of what appeared to be publicly-known *nonconfidential* information Unified Patent sought to seal. Even assuming the identity of its members is confidential, Unified Patent can redact the identity of its members without sealing the entire contents of Exhibit 2005.

² In IPR2017-02148, Paper 34, the Board noted that similar documents appeared to contain non-confidential information, noting for example that it is public information that Square Enix is a member of Unified Patents.

Aside from arguing that the identity of its members is confidential, Petitioner only vaguely argues that the contract terms in its agreements are highly sensitive. Petitioner's business model is well known. It cannot be plausibly argued that every word and every term within its member agreements is confidential. Even assuming certain terms are confidential, Petitioner can redact those without sealing the entire contents of Exhibit 2005.

2. Petitioner has not shown good cause to seal the redacted portions of the Patent Owner Response.

Petitioner also fails to show good cause to seal the redacted portions of the Patent Owner Response. Petitioner alleges the Patent Owner Response "directly quotes, references, and cites to confidential information" but does not show good cause *why* the specific information referenced or quoted in the Patent Owner Response is confidential.

3. Petitioner waived the alleged confidentiality of the information it seeks to seal.

Petitioner waived the alleged confidentiality of all Petitioner's produced documents on September 11, 2018 by *twice* voluntarily sending the entire production (77 pages in total) not only to Brett Mangrum – who signed the acknowledgement of the PTAB's default protective order in that matter – but also to those who did not sign an acknowledgment of the default protective order, including in-house counsel for Uniloc and counsel who is not of record. EX2012. Petitioner made no attempt to recall either of its waivers until two weeks later, on September 25, after Uniloc identified the waiver in its Patent Owner Response filed on September 21.

There is no claw-back provision in the default protective order governing this

IPR. The Practice Guide comments note that a claw back provision was deliberately omitted from the default protective order. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,644 (Aug. 14, 2012) (“Practice Guide”) (Comment 164 and response, noting the deliberate absence of a claw back provision in the default protective order and stating that “should the parties desire more or less protection than that provided by the default order, the parties are always free to stipulate to other protective order terms”).

Petitioner misleadingly argues the “Parties” entered the Default Protective Order filed by Petitioner as Exhibit 1017. Exhibit 1017 is not an agreement entered by the parties and the signature. It is instead, two separate documents presented by Petitioner as if they are one. At the end of a (paginated) copy of the Default Protective Order, evidently taken from the Practice Guide, Petitioner attached a “Standard Acknowledgment of Access to Protective Order Material” signed by Brett Mangrum. The Standard Acknowledgment is not part of a protective order signed by the parties (they entered none) and is not signed by Patent Owner. It is, on its face, signed by Brett Mangrum in his individual capacity, in which he acknowledged that he is “personally responsible for the requirements of the terms of the Default Protective Order.” To Uniloc’s knowledge, Petitioner created the Default Protective Order attached to its motion *after* Mr. Mangrum signed the acknowledgment.

Petitioner misconstrues the language of the Default Protective Order, arguing Mr. Richins, “an attorney for Patent Owner,” was allowed access to the information. The Default Protective Order specifically limits access to “[r]epresentatives of record for a party in the proceeding.” Mr. Richins is not a representative of record

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